In re ABDULLAH SALEH SHOOKER, DECD.

[O. C. J. (Jobling J.) August 28, 1948]

[Singapore — Originating Summons No. 87 of 1948]

Moratorium Proclamation (No. 5 of 1945) — Meaning of "debt" — Whether a legacy under a Will comes within the definition of debt — Payment of interest on legacy — R.S.C., O. 52 r. 60 — Courts (Restriction of Civil Jurisdiction) Ordinance, 1946.

In this case the executors of the Will of Abdullah Saleh Shooker, deceased applied to Court for the determination of the following question relating to the payment of a legacy of $10,000 bequeathed to Sophie Abed, namely, "Should interest be paid by the executors on the legacy and if so at what rate and from what date should it run?" Clause 11 of the Will of the deceased provided "that the pecuniary legacies bequeathed by this my Will shall be payable at the expiration of one year after the date of my decease and shall carry no interest in the meanwhile but my trustees may if they think fit make payments to account to any one or more of the said legatees to the exclusion of the other or others before the expiration of the said period of one year if they shall in their absolute discretion think fit so to do."

Held: (1) a legacy comes within the definition of "debt" in the Moratorium Proclamation; (2) in this case the general rule, set out in Order 52, rule 60 of the Rules of the Supreme Court should be applied, and therefore the executors should pay interest on the legacy at the rate of six per centum per annum from the end of one year after the testator's death.

Cases referred to:—

(1) *King v. Ladd* 24 L.T. (O.S.) 172.

(2) *Wood v. Peboyre* 33 E.R. 316.

ORIGINATING SUMMONS.

J. C. Cobbett for the executors.

E. R. Koek for the legatee.

L. Rayner (Crown Counsel) for the charities constituting the residuary legatees.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Jobling J.: — The deceased Abdullah Saleh Shooker died in Singapore on 14th March, 1942 and the executors of his Will have applied to the Court for the determination of the following question relating to the payment of a legacy of $10,000 bequeathed to Sophie Abed (now Sophie Burns) namely:—

Should interest be paid by the executors on the legacy and if so at what rate and from what date should it run?

Mr. Rayner for the charities which constitute the residuary legatees submitted that the provisions of the Moratorium Proclamation No. 5 of 1945 applied to this legacy as it was a "debt" within the meaning of the definition of that term in the Proclamation.

If the Moratorium did not apply he submitted that the circumstances which had prevented the estate being administered, i.e. the Japanese occupation of Malaya, justified the Court in disregarding the general rule that interest should begin to run after one year from testator's death and that it should run from 1st September, 1946, one year after the end of the Japanese occupation.

He also contended that these proceedings related to immovable property and that therefore they could not be entertained by the Court under section 2(b) of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946.

Mr. Cobbett for the executors and Mr. Koek for the legatee made contrary submissions.

The Moratorium Proclamation only applies if the legacy comes within the meaning of the term "debt", the ordinary significance of which is extended by the Proclamation to include "any form of claim or obligation for the payment of money." This is a very wide definition but as Mr. Koek pointed out in an admirable argument section 4 limits the operation of the Proclamation to debts incurred before the Proclamation took effect i.e. 2nd November 1945 and the question is therefore first is the legacy a debt within the meaning of the Proclamation and secondly if this is so is it a debt incurred before 2nd November, 1945.

As to the first point, a debt in the ordinary acceptance of the term implies an obligation on the part of one person to pay money to another and in construing the term as it is used in the Proclamation this must be strictly interpreted as a legal obligation to pay.

An obligation sufficient to maintain an action at law for a legacy only arises when the legatee's title has been completed by the executors assent to it (see *Williams* on Executors 11th Ed. page 1099 and *King v. Ladd*[1]).

The executors have not assented to this legacy and therefore it is not in my opinion a debt within the ordinary meaning of the term. For the same reason that no action at law can be taken to recover it, I think it is clearly not an obligation for the payment of money within the definition in the Proclamation. Is it a "form of claim for payment of money" within that definition? The legatee has the legal right to pursue his legacy by applying for the administration of the estate and I think this is legal recognition that he has some form of claim.

The definition is exceedingly wide and I think that it is wide enough to include a form of claim, such as a legacy, which is legally recognised as sufficient to found an application to the Court.

The legacy is therefore a debt within the extended meaning given to the term in the Proclamation.

The second point concerns section 4 of the Proclamation which declares that a "moratorium is hereby proclaimed in respect of all debts incurred before the date when the Proclamation takes effect" i.e. 2nd November, 1945.

This means that the Moratorium only operates when an obligation to pay has been incurred before the specified date. It cannot by any stretch of the imagination be construed to mean that the Moratorium will apply where a "form of claim" has arisen before the specified date. In my view therefore where a debt comes within the definition in the Proclamation only because it is "a form of claim" then an obligation to pay must have been incurred by the debtor before the specified date irrespective of whether the right to claim arose before or after that date.

In the present case the probate of the deceased's Will was granted to one of the executors on 26th April and to the other on 12th January, 1948.

The executors were not in a position to assent to the legacy before the Will was proved and as their assent was necessary before any debt accrued for the legacy it is clear that the Moratorium Proclamation, which applies only to debts accrued before 2nd November, 1945, does not apply to this legacy.

Mr. Rayner suggested that these proceedings came within the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946 (No. 10 of 1946) section 2(b) as part of the estate consisted of immovable property and that therefore this Court had no power to entertain them,

The section mentioned refers to proceedings relating to immovable property. These proceedings are to ascertain whether interest is payable upon a legacy of a sum of money. The estate consists of both personal and immovable property and the relation of the proceedings to immovable property is uncertain and remote.

In my view the phrase "suits ..... relating to immovable property" in the Ordinance must be read narrowly as a reference to suits in some way founded on or affecting immovable property and it cannot be read as including suits where the relation to immovable property is so uncertain and remote as in this case.

Coming now to the question raised by these proceedings; under Order 52 rule 60 of Rules of the Supreme Court interest on legacies "shall be computed at the rate of six per centum per annum from the end of one year after the testator's death unless otherwise ordered or unless any other time of payment or rate of interest is directed by the Will."

Mr. Koek has urged that clause 11 of the Will shows the testator's intention that legacies should bear interest after the expiration of one year from the date of testator's death. This clause reads as follows :—

"That the pecuniary legacies bequeathed by this my Will shall be payable at the expiration of one year after the date of my decease and shall carry no interest in the meanwhile but my trustees may if they think fit make payments to account to any one or more of the said legatees to the exclusion of the other or others before the expiration of the said period of one year if they shall in their absolute discretion think fit so to do."

I am unable to agree that this is a direction to pay interest after the expiration of one year. It is at most a recognition of the general rule that interest will become payable after one year and this must imply a recognition of the whole rule namely that interest will be paid after one year unless otherwise ordered by the Court.

In the absence of any express direction the general rule must stand and the only question is whether there are any circumstances which justify ordering interest to run from any other date than one year after testator's death.

As regards Mr. Rayner's submission that the state of war and the occupation of Malaya by the Japanese which existed until September, 1945, created such circumstances I think the principal difference which the war and occupation of Malaya made to this estate is that it caused its administration to be postponed so that funds were not available to pay the legacies at the expiration of one year after the testator's death. Against that it is clear that the assets of the estate were producing at least some interest and probably other income.

In *Wood v. Peboyre*[2] it was held that the general rule as to payment of interest after one year applied even if the fund out of which the legacies were to be paid was not available until after the expiration of the year. Sir W. Grant, M.R. said :—

By a rule that has been adopted for the sake of general convenience this Court holds the personal estate to be reduced into possession within a year after the death of the testator. Upon that ground interest is payable upon legacies from that time, unless some other period is fixed by the Will. Actual payment may in many instances be impracticable within that time yet in legal contemplation the right to payment exists, and carries with it the right to interest until actual payment.

On this authority and having regard to the fact that the estate was producing income during the war period I think the legatee is entitled to her interest during that period and the general rule should apply.

The order of the Court will therefore be that the executors pay interest on the legacy of $10,000 bequeathed to Sophie Abed (now Sophie Burns) at the rate of six per centum per annum as from the 14th March, 1943, i.e. one year after testator's death.

Costs to be taxed as between solicitor and client and paid out of the estate.

Order accordingly.

Solicitors : *Rodyk & Davidson; Eber & Koek.*